IN THE

Supreme Court of the United States

October Term, 1943.

PATRICIA R. O'BRIEN,

Petitioner,

v.

EDWIN J. O'BRIEN, ET AL.,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

I. Factual Background.

The case below is 294 Ky. 793, 172 S. W. 2d 595.

Petitioner is the widow of John A. O'Brien and the sole beneficiary of his last will (Opinion, p. 1). She sued the respondents, who are his former partners and are his brothers, with the executors of his mother's will and his co-administrators, in the Jefferson Circuit Court of Kentucky to rescind her sale of his interest in the partnership of Edward J. O'Brien & Company. In substance, she averred fraud in the transaction—specific misrepresentations that its value was only $425,649.45, breach of fiducial duty to disclose and the concealment of facts showing its true worth of more than $642,761.43 (R., Vol. 1, pp. 93, *et seq.*). Further she averred an unlawful conspiracy on the part of the real defendants to possess themselves of her husband's interest (R., Vol. 1, p. 74).

The genesis of that charge is in "some apparently shameful occurrences," as we quote and now review findings of the Court of Appeals to show. The husband, John A. O'Brien, died of tuberculosis, whether with or without contributing illness, on January 1, 1934. He became ill in 1933. He quit going to the firm's offices in April, 1933, because, as he reported, of mistreatment by his brother, Edwin. During a half hour absence of his wife, on the afternoon of June 20, 1933, he disappeared from their home. Upon inquiry by his wife and her attorney, Leo T. Wolford, at the firm's office, his brother, Edwin O'Brien, refused to tell them anything. She located him at the home of another brother, Joseph, but then over a period of days was repeatedly denied admittance on the claim that he was too ill to see anyone. On these occasions, four khaki-clad, armed men guarded the hall and the outside. Further and continued efforts to see her husband or to talk with him by telephone failed. Finally, on August 3d, she found him in a dying condition at a hotel. The respondents shrugged off these occurrences with the claim of Joseph B. O'Brien that John had come and gone at his pleasure (Opinion, p. 5).

During that period of incarceration, he signed certain documents. "The execution of these papers is surrounded by mystery" (Opinion, p. 6). His wife had been the sole beneficiary of $200,000 of insurance policies on his life. A purported insurance trust signed July 7, 1933, omitted her and named (1st) any "improbable," surviving child or children and (2d) his "blood relatives" in the firm of Edward J. O'Brien & Company. Contrary to its recitals, no policies were ever deposited under this trust. On the same day, he signed a will. It gave his wife substantially only what she would be entitled to under the law upon a renunciation of any will and gave the residue of his property as in the trust agreement (Opinion, p. 6).

Several weeks later, he "set about diligently to undo what had been done and to revoke the trust." The Court of Appeals found that he then executed forms irrevocably designating his wife as sole beneficiary, but "overlooked" one policy for $50,000 in which she had been given a life interest (Opinion, pp. 7-8). By a will dated September 22, 1933, apparently executed in October, he made the single bequest:

> "I give to my wife, Patricia R. O'Brien, all of the household furniture and all of the personal property of my estate" (Opinion, p. 8). (He had no real estate outside the partnership, the latter being considered by the Court as personalty, in a going concern.)

Following his death, representatives of the brothers laid claim to the insurance, under the trust agreement, and thereby succeeded in holding up payment of $150,000 to the widow. They suggested, if not threatened, various contests. They threatened suit on the insurance trust agreement. They threatened to have the last will construed to give petitioner only personal effects such as apparel (Tr., Vol. 2, p. 226, q. 224; Vol. 6, p. 671, q. 68). They threatened to incorporate the company and "freeze out" her interest so that it would not be worth $100,000 (Tr., Vol. 2, p. 218, q. 216; Tr., Vol. 20, p. 1881); Mrs. O'Brien is corroborated in this testimony by Mr. L. R. Curtis (Tr., Vol. 7, pp. 796, 804, 812, 813); E. C. Wirotzious, (Tr., Vol. 6, pp. 621, 622, 646); F. A. Shonkwiler (Tr., Vol. 7, p. 723); Mrs. L. S. Blickenstaff (Tr., Vol. 6, pp. 671, 679, 680, 689, 694); H. R. Douglas (Tr., Vol. 6, p. 584). They declined to consider letting her have the insurance unless she would agree to a sale of the partnership interest. Mrs. O'Brien was insisting that she did not want to dispose of that interest and that the insurance matter should be handled separately.

"And we have approached the consideration of the pivotal question," said the Court of Appeals, "in respect to the transaction involved in the litigation, namely the accomplishment of the contract sought to be rescinded, believing that the partners started out to acquire their deceased brother's interest in the partnership, with little scruple, as to the method or means to be employed" (Opinion, p. 10).

Under the doctrine of *uberrima fides* as applied to the purchase of a partnership interest, the Court of Appeals declared that the purchasing partners owed Mrs. O'Brien an "active duty" to "deal fairly with her" and to "voluntarily disclose full and accurate information concerning the business, its affairs and values." The ultimate of the Court's legal conclusion was:

> "If she relied upon them having done so and they had not, she is entitled to a rescission or other equitable relief, if designedly, on the ground of fraud; if innocently, on the ground of mistake. Obviously if there was actual misrepresentation, the result is the same."

As the basis of negotiation, and, in June, 1935, O'Brien's attorney gave the widow and her counselors a memorandum known in the record as plaintiff's Exhibit 22. They also gave her attorney a copy of an audit for the fiscal year ending November 30, 1934 (plaintiff's Exhibit 26). In addition, the O'Brien brothers allowed her and her counselors for a "brief while" to see audits back to 1928. "It seems," as the Court of Appeals found, "the earlier audits were in possession of Mrs. O'Brien's counselors only a short while" (Opinion, p. 24). It is undisputed that this "short while" was the period from 10 A. M. until 3 P. M. on June 27, 1935. The O'Briens insisted on their return at that time (Tr., Vol. 20, pp. 1817, 1871).

Exhibit 22 and the 1934 audit showed the value of decedent, John A. O'Brien's interest as $425,649.45, the representation claimed in the petition. "We have," said the Court, "The peculiar situation here of innocence by the challenger of the conditions of the business who, however, had no confidence in the representations of those with whom she was dealing and who had competent and trustworthy counselors" (Opinion, p. 32).

Yet, from the necessity of the case, the Court found in effect that she and her counselors did rely and had to rely on those representations, as all the information they had.

For it found that "On Mr. Humphrey's (Mrs. O'Brien's attorney) request, Edwin J. O'Brien, Jr., made an affidavit, that all the assets of the partnership were described in the audit reports and that the partnership had no assets not reflected therein" (Opinion, p. 15). Thus they sought personal assurance of the fact and of the fullness of the information. Further, the Court found that the "negotiations were predicated upon the book values" (Opinion, p. 22), and that "all parties seem to have been content to settle upon the basis of book value" (Opinion, p. 23). As the "predicated" facts and as the "basis" of negotiations for the purpose of the Court's rulings, and in view of the lack of other information and the assurance sought and given, she and her counselors did rely on it. In no other way can the somewhat apparent contradictions of the opinion be sensibly understood.

But, this figure of $425,649.45, taken from the "books" was in fact held out and accepted as the real or market value of John A. O'Brien's interest. Plaintiff's Exhibit 22 showed $425,649.45 as the "present" interest. Moreover, it depreciated the value of the subsidiaries 50% because of supposedly "depressed" conditions (Opinion, p. 22) especially of the English subsidiary (Opinion, p. 16).

In that light, Exhibit 22 as a representation was subject to no other fair construction on its face:

PLAINTIFF'S EXHIBIT No. 22.

Present Interest		$425,649.45
Real Estate	$331,873.95	
Pro Rate based on capital....	23.77%	78,886.44
		$346,763.01
Her ⅓ Life Interest Real Estate 23¼% of $78,886.44		18,341.10
		$365,104.11
Depreciate wholly owned subsidiaries 50% $252,500 at 50%—$126,250 at 23.77%....		30,009.62
		$335,094.49
Remainder Interest in $50,000 Life Ins..		17,500.00
		$317,594.49
½		$158,797.25

$425, 649.45 was expressly represented to plaintiff as the market value (Tr., Vol. 2, p. 212, q. 197, p. 213).

At least Edwin J. O'Brien, Jr., made affidavit that the underlying "audit * * * reflected * * * all the assets" (Opinion, p. 15). Certainly, it was the undisputed conviction of all her counselors at every point that the interest was really worth no more—Mr. Edward C. Wirotzious (Vol. 6, pp. 614, 615, 616), Mr. L. R. Curtis (Tr., Vol. 7, pp. 800, 801, 202), Mr. L. S. Blickenstaff (Tr., Vol. 7, pp. 834, 836), Mrs. L. S. Blickenstaff (Tr., Vol. 6, p. 671), Mr. F. A. Shonkwiler (Tr., Vol. 7, pp. 723, 727), J. G. McPherson (Tr., Vol. 17, pp. 1629-30), George D. Caldwell (Tr., Vol. 16, p. 1537), Edward P. Humphrey (Tr., Vol. 15, pp. 1415-16-56-57).

That is why and only why Mrs. O'Brien and her counselors "predicated" the negotiations on it and were "content to settle upon the basis" of it. "The fact," said the Court, "that the widow had capable counselors did not relieve the surviving partners of any of their duties and responsibilities. But their retention, knowledge and counsel concerns very materially the factor of her dependence and reliance upon the prospective purchasers' representations, made or omitted."

Recurring to the adjudged prior "innocence" of the widow "of the conditions of the business," it is the undisputed fact that her "counselors" and "advisers" had or received no more information of materiality than was available to her (Humphrey, Tr., Vol. 15, pp. 1421, 1456, 1457, q. 152; Vol. 3, p. 330, q. 451; McPherson, Vol. 17, pp. 1614, 1629-1630; Vol. 19, pp. 1769, 1774, 1775). There is no pretense that they had any more.

To place ourselves in position to show wherein petitioner was denied due process in her effort to try specific breaches of the active duty to disclose full and accurate information, it is necessary to enumerate the items of concealment and misrepresentation.

1. Represented value		$425,649.45
2. John A. O'Brien's 21.25% of additional values:		
Profit for 1935 of Edward J. O'Brien & Co.	$ 17,185.07	
Increase in value of securities	22,262.05	
Goodwill of Edward J. O'Brien & Co.	147,168.42	
Excess of appraised over book value		
(a) Property, Plant & Equipment		
1. Edward J. O'Brien & Co.	37,254.93	
2. Subsidiaries	8,890.51	
Estimate of Excess of Market over cost or book value		
(b) Tobacco Inventory		
1. Edward J. O'Brien & Co.	10,830.34	
2. Subsidiaries	6,688.18	
Interest due from Edwin O'Brien		
1. Capital deficiency	29,907.49	
2. Overdraft	6,570.21	
Improper charge of expense	5,083.69	
Excess value of Subsidiaries over book value	5,697.49	
	$297,558.39	$297,558.39
True Value—November, 1935		$723,207.84

That in the negotiations respondents flatly denied petitioner leave to make an independent audit at her own expense was testified by Mr. Wirotzious (Vol. 6, pp. 619-640, 642, 649, 653; Vol. 20, pp. 1823, 1824, 1825, 1826, 1827, 1828), Mr. Shonkwiler (Vol. 7, pp. 722, 724, 726, 727), Mr. Curtis (Vol. 7, pp. 800, 808), Mr. Douglas (Vol. 6, p. 584), Mr. L. S. Blickenstaff (Vol. 7, pp. 832, 834, 846, 847, 849), Mrs. Blickenstaff (Vol. 6, pp. 674, 675, 686, 685, 690, 694, 702, 703).

Respondents were as unwilling to make disclosure at the trial.

The denial to Patricia R. O'Brien by the trial court of all access to every book of original entry and primary fact, except the physical plants, is established by the orders in the record. Prior to the hearing before the trial court, and on February 23, 1940, she filed a motion for subpoena *duces tecum* (R., Vol. 3, p. 259), to reach the following books of Edward J. O'Brien & Company and its four subsidiaries for the period from November 1, 1928, to December 31, 1938, viz.: (1) general ledger, (2) journal record, (3) private ledger, (4) accounts receivable ledger, (5) accounts payable ledger, (6) check register, (7) voucher register and vouchers, (8) purchase journals, (9) sales journals, (10) investments records, (11) expense analysis records, (12) copies of Federal and State Tax Returns, (13) inventory records, (14) inventory reports filed with the United States Government, (15) contracts involving the sale of tobacco in force and effect November 5-15, 1935, and February 11, 1936, (16) plant and equipment record, (17) partners' personal account books or records, (18) correspondence in connection with any summary item in the audit. The motion was supported by an affidavit of Hugh A. White, plaintiff's auditor (R., Vol. 3, p. 261). The Court partially sustained (but only temporarily on the material points) plaintiff's motion by directing defendant, Edwin J. O'Brien, Jr., to produce or permit plaintiff, by counsel, auditor and necessary clerical assistants to examine (1) tobacco inventories for 1935, including report to the State or Federal Government or any of its agencies respecting the amount, grades and year of tobacco in the inventory, particularly Form TS-1 of the United States Department of Agriculture for 1931-1935, inclusive; (3) all copies of income tax returns of the partnership and all correspondence relative thereto for the

years 1931 to 1935, inclusive, with the Commissioner of Internal Revenue; (4) insurance premiums paid on any type of insurance by the firm and charged thereto for 1931 to 1935, inclusive; (5) any appraisals of Coats & Burchard and/or any other appraisals of similar character for 1936, 1937, 1938 (R., Vol. 3, p. 273).

On March 12, 1940, it was necessary for plaintiff to file a motion to require Edwin J. O'Brien, Jr., to comply with the Court's order with respect to tobacco inventories and to produce all records giving details of tobacco inventory as of November 30, 1935, such as type, group, quality, color and length (R., Vol. 3, p. 279). However, the Court overruled plaintiff's motion (R., Vol. 3, p. 294). The same day plaintiff moved the Court for an order permitting inspection of the property, plant and equipment of Edward J. O'Brien & Company, H. N. Martin Leaf Tobacco Co., and the Tobacco Rehandling Company, Ltd., Inc., and for access to the property and to depreciation reserve accounts, the maintenance and repair accounts and the plans and specifications of building construction of each of said company and subsidiaries (R., Vol. 3, p. 284). The motion was sustained insofar as access to land, buildings and fixtures was requested but the Court denied access to the detailed reserve accounts to the maintenance and repair accounts, and to the details of construction (R., Vol. 3, p. 295).

Plaintiff again moved the Court on March 20, 1940, to order defendants to produce such of the records of the partnership and its four subsidiaries showing individual sales of tobacco and prices, quantities and gradings involved in each from May 1, 1935 to May 1, 1936 (R., Vol. 3, p. 299). The Court not only overruled plaintiff's motion, but also upon its own motion expunged from its order of February 29, 1940 the language requiring the production of tobacco inventories for 1935 and government re-

ports (R., Vol. 3, p. 297). The record reveals that no books of original entry of Edward J. O'Brien & Co. or any of its subsidiaries were either voluntarily or under orders of the Court ever submitted to Patricia O'Brien or the co-administrators or to her attorneys, or to Hugh A. White, her auditor, or to any other auditor of Patricia O'Brien (Tr., Vol. 9, p. 920, q. 28).

(1) It is undisputed that the representation of defendants O'Brien on Plaintiff's Exhibit 22, viz.: "Present Interest—$425,649.45," did not include John A. O'Brien's share of the goodwill of Edward J. O'Brien & Co. Nor was there any amount whatsoever for the goodwill of this business included or considered in the negotiations which culminated in the sale of John's interest on November 5-15, 1935.

This, however, in no way altered the fact that Edward J. O'Brien & Company had goodwill which constituted one of its most valuable assets. A goodwill value arises when a business is established and has demonstrated ability over a period of years to earn a profit in excess of a normal interest return upon the invested capital. Here was a business that dated back to 1880, and had been a consistent, dependable money-maker for more than half a century, including all the years of the depression. In November, 1935, Edward J. O'Brien & Company had for many years been the largest independent redrying and rehandling tobacco brokers and dealers in the world (Opinion, p. 2); they had vast holdings, including redrying and rehandling plants in several states (Tr., Vol. 12, p. 1111, q. 238), and their unbroken record of contracts with tobacco growers and buyers, as well as manufacturers, had won a large clientele, which included even foreign governments, such as the Government of France, and an important English contract. Likewise, The American domestic business was, year in and year out, producing a substantial profit.

The business was so deep-rooted and substantial that even when Edward O'Brien, Sr., died in 1928, the business continued on just as before, with large profits each and every year thereafter (Tr., Vol. 10, p. 983, q. 26).

Obviously, suppressed, subsisting contracts of the firm for the sale of tobacco would have been one if not the most vital and tangible elements of its good will. On the trial petitioner was relegated in its estimation to a capitalization of the net earning from the tobacco business in excess of six per cent, as shown only by the audits respondents chose to furnish—to their evidence. After doubtful musings whether value so found actually existed, the Court of Appeals concluded that petitioner and her representatives could have "as easily calculated" it as the respondents. "The Court of Appeals mistakes the record in saying the capitalized goodwill value of the firm was $147,169.42 (Opinion, p. 21). That was John's 21.25% interest in it, the firm's total being $692,557.25 (Tr., Vol. 9, pp. 967-971 and Plaintiff's Exhibit 57).

This is in the face of the finding that, save for th November, 1934 audit, they had the audits for only a "brief while" (5 hours) in the negotiations. It is undisputed that audits for at least 6 and preferably 10 years are needed to compute goodwill even by the method of capitalization (Tr., Vol. 10, p. 1004). It is undisputed that even an experienced auditor with assistants requires at least 30 days to make such analyses of respondents' audits furnished petitioner and with which she had to be content at the trial (Tr., Vol. 9, pp. 919 and 920). That it would have been physically impossible to make such "calculations" in such few hours (Tr., Vol. 20, p. 1889). The trial Judge himself so found and shut off inquiry on the subject (Tr., Vol. 20, pp. 1890, 1891, 1892).

Thus, the trial Judge would not allow tangible proof and the appellate court foreclosed her for lack of it.

In this respect, not only in the negotiations but in the trial in the Circuit Court and in the final result there was an arbitrary and a substantial denial of the right to be heard.

(2) There is conflict in the evidence whether petitioner was presented an appraisal of *March 31, 1934*, showing the "net sound value" of real property, plant, and equipment as $506,301.95 (Opinion, p. 24). This value was represented to her in Exhibit 22 and in the balance sheet given her as $331,873.95. But, it is undisputed fact that she was not furnished or told of an available appraisal as of the previous March 1, 1935, showing this same value as $541,259.18 (R., Vol. 2, p. 254-C; p. 254-D; Ex. 60).

(3) Because the petitioner was also cut off from the actual means of proving the actual market value of the tobacco inventories—what kind and amount of tobacco they had, it is impossible to say what the increased value is that should be added to the book value to arrive at a true value for the purpose of the sale of the partnership interest (Tr., Vol. 9, p. 960, q. 89). Thus the Court of Appeals was enabled to brush aside (Opinion, p. 25) an estimate of the excess market value of $17,538.52 of the John A. O'Brien's interest based upon only 6.9% of profit on total inventory cost of $973,923.71 (Exs. 57-61-62-63-64).

(4) It is mistakenly stated in the opinion that a partial "audit" of the accounts of the company was made for petitioner pending the trial of the case (Opinion, p. 25). It is undisputed fact that the only "audit" made by any representative for the petitioner was a mere analysis of the respondent's audits and of the other partial and secondary information that respondents and the trial Court would concede to her (Tr., Vol. 9, p. 920; Ex. 57). Petitioner's auditor, Hugh A. White, was never permitted to see any books, save as above noted (Tr., Vol. 20, p. 1882).

In effect, the Court of Appeals concludes that petitioner failed to meet the burden of proof (Opinion, p. 32). She was cut off by the trial judge, without redress from the appellate court.

Under fundamental principles of justice, "rooted in the traditions and conscience of our people," certainly she showed enough to be entitled to the primary facts, to the examination of vital and of original records by her own witnesses—if not in the negotiations, then in the trial. Both the *uberrima fides* demanded by the situation and judicial fair play entitled her to that. The reasons of the trial Circuit Court for denying her an opportunity for that type of hearing were illusory and flatly contradictory; because "goodwill" as capitalized from income shown on respondents' audits was "enough," more from contract and the like would be an "over-refinement"; also it included market values of inventories. But, the Court of Appeals held it was not enough and did not include them. Anyway, the trial judge would "personally prefer" respondents' audits (R., Vol 3, pp. 307, 308). Besides, *uberrima fides* would be "inconvenient" to respondents (p. 307)! Inconvenience was not a defense to producing facts demanded by the situation (*cf.*, Petroleum Exploration v. Public Service Com,, 304 U. S. 209, 58 S. Ct. 834, 82 L. Ed. 1294). The trial Circuit Judge himself illustrated the necessity for the basic figures—the customary book method of valuing large assets at nominal values, yet persisted to the last in his denial of any discovery of the original books of entry or original sources of the evidence. Withal, a quality of flippancy and overdrawn levity tantamount to caprice stamps the Circuit Court's trial of the case, discernible in reading only the final opinion (R., Vol. 3, pp. 340, *et seq.*), and the narrative of the efforts to obtain disclosure. Transcript of Proceedings on motion for Subpoena *Duces Tecum*, Vols. 1, 2 and 3, Transcript of Testimony of • • •

March 12, 1940, and of March 20, 1940. (In volumes on transcript of proceedings in advance of trial on subpoena *duces tecum*.)

Argument.

(1) To constitute a hearing which satisfies due process, it must be a real one and not a sham or pretense. Moore v. Dempsey, 261 U. S. 86, 67 L. Ed. 543, 43 S. Ct. 265; Mooney v. Holohan, 294 U. S. 103, 79 L. Ed. 791, 55 S. Ct. 340, 98 A. L. R. 406. To satisfy due process, a hearing must be a fair one (Railroad Com. of California v. Pacific Gas & Electric Co., 320 U. S. 388, 58 S. Ct. 334, 82 L. Ed. 319), according the litigant an actual opportunity to present evidence in support of his contentions. Georgia Railway & Electric Co. v. Decatur, 295 U. S. 165, 55 S. Ct. 701, 79 L. Ed. 1365; B. & O. R. R. Co. v. U. S., 298 U. S. 349, 80 L. Ed. 1209, 56 S. Ct. 797.

To condemn without a hearing or to depart from established modes of procedure offends due process. Windsor v. McVeigh, 93 U. S. 274, 277, 23 L. Ed. 914.

A State may deprive a person of due process through its judicial function as effectively as through its legislative. Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U. S. 673, 50 S. Ct. 451, 74 L. Ed. 1107.

It cannot be contended that the statutory law of Kentucky is deficient. Section 528 of Carroll's Kentucky Code of Civil Practice reads:

> "The process by which the attendance of a witness is required is a subpoena. It is a writ directed to the sheriff, requiring him to summon the person named therein to attend at a particular time and place, to testify as a witness. It may, when the court or the judge thereof so directs, require the witness to bring with him any book, writing or other thing under his control, which he is bound by law to produce in evidence."

To drown in a mass of whimsical colloquy and circumlocution a litigant's substantial right to evidence demanded by the subject and necessities of the case transcends judicial discretion and results in but a pretense of a hearing. It relegated petitioner to inferences from the previous inferences of her adversaries' witnesses, however reputable. A party is entitled to his own reputable expert witnesses and their honest inferences.

The ruling of the Court of Appeals on the Trial Judge's denial to petitioner of the original sources of the evidence is noteworthy. If error, said the Court, it did not offend due process because due process does not assure a litigant against judicial errors in the exclusion of evidence. (Citing opinions of this Court, Opinion, p. 32A). If there were mere errors, of which the Court did not expressly say, it had the undoubted power to correct them, without regard to due process. Why anticipate the opinion of this Court? But, it was not mere error. The denial went to the heart of petitioner's right and opportunity to be heard under the circumstances.

Finally, the Court declared it had tried the case *de novo* and that petitioner was not claiming that it had denied petitioner a complete hearing or a fair trial. But, the appellate court heard no new evidence. It never does on appeals. It is bound by the record brought to it. Edwards-Barnard Co. v. Pflang, 115 Ky. 393, at p. 403, 73 S. W. 1018; Carroll's Kentucky Civil Code of Practice, Sec. 737. Of course, the Court had reference only to the general rule, that appellate courts try equity cases anew on the same evidence.

2. Therein by indirection, the Court sustained a denial of the due process guaranteed by the Fourteenth Amendment to the Federal Constitution. Not only therein, but in arbitrarily and capriciously deciding the case contrary to well settled and admitted principles of law and the in-

disputable concealment of large values, the court below denied petitioner due process Saunders v. Shaw, 224 U. S. 317, 37 S. Ct. 638, 64 L. Ed. 1163; Truax v. Corrigan, 257 U. S. 312, 425 S. Ct. 124, 66 L. Ed. 254; Washington, *ex rel.* Oregon R. R. Co. v Fairchild, 224 U. S. 510, 56 L. Ed. 863, 32 S. Ct. 535.

Conclusion.

We respectfully submit that the writ of certiorari should be granted and the judgment and opinion below reversed.

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